

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF THE DEPUTY SECRETARY/CHIEF COUNSEL
1227 "O" Street, Room 306
SACRAMENTO, CALIFORNIA 95814
Telephone: (916) 653-2539
Facsimile: (916) 653-2454



**NOTICE OF PROPOSED RULEMAKING
TITLE 12, CALIFORNIA CODE OF REGULATIONS
AMEND SECTION 501
REGARDING VETERANS HOME ADMISSION**

NATURE OF PROCEEDING

NOTICE IS HEREBY GIVEN that the California Department of Veterans Affairs (CDVA) is proposing to take the action described in the Informative Digest.

NO PUBLIC HEARING

No public hearing is scheduled for this rulemaking. However, any interested person, or his or her duly authorized representative, may request a public hearing no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

NOTICE IS ALSO GIVEN that any interested person, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action to:

The California Department of Veterans Affairs
Office of the Chief Counsel
1227 O Street, Suite 306
Sacramento, California 95814

Comments may also be submitted by facsimile to (916) 653-2454 or by e-mail to robert.wilson@cdva.ca.gov. Comments must be submitted prior to 5:00 p.m. on May 26, 2008.

Following the comment period, the CDVA may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal, or who provide oral testimony if a public hearing is held, or who have requested notification of any changes to the proposal.

HONORING CALIFORNIA'S VETERANS

AUTHORITY AND REFERENCE

Sections 64, 72, 700, 1012 and 1044 of the California Military and Veterans Code authorize the CDVA to adopt this proposed regulatory amendment. The proposed amendment implements, interprets, and makes specific section 1044 of the California Military and Veterans Code. The CDVA is considering changes to Division 2 of Title 12 of the California Code of Regulations as follows: Amendment of section 501.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The CDVA operates and maintains a California Veterans Home (with several campuses) that provides long-term care to eligible veterans and their spouses. A portion of the cost of caring for these individuals may be offset by federal, state or private health service plan reimbursements, or medical programs offered by the United States Department of Veterans Affairs. The CDVA estimates that over the past 10 years it has lost an average of \$36,000 per year in potential reimbursements because of care it provided to Home residents that have no health care coverage. In one instance, the CDVA incurred a debt of more than \$150,000 in caring for such an individual.

Under existing law, the California Veterans Board (Board) determines the policies for all operations of the CDVA. Home Administrators, under the policy guidance the Board provides, are permitted to implement regulatory provisions that determine the conditions upon which an applicant may be admitted to, and remain in, a California Veterans Home. In policy statement C-12, the Board has directed the CDVA to develop plans and establish procedures for ensuring that a new veteran applicant for admission to a California Veterans Home be either (1) participating in a United States Department of Veterans Affairs medical program, (2) a federal, state or private health service plan, or (3) have an application for such coverage pending before he or she is granted admission. Board policy statement C-12 also requires a non-veteran spouse to be participating in a federal, state or private health service plan as a condition of admission. This rulemaking action therefore implements the Board's policy directive and clarifies and makes specific one condition upon which an applicant to a California Veterans Home may be admitted and remain in the Home. The policy objective is to recover as much of the cost of caring for a Home resident as is reasonably possible.

There are no comparable provisions of federal law related to this proposal.

LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts.

FISCAL IMPACT ESTIMATES

This proposal does not impose costs on any local agency or school district for which

reimbursement would be required pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary costs or savings on local agencies. This proposal does not result in any costs or savings in federal funding to the state.

COSTS OR SAVINGS TO STATE AGENCIES

The CDVA estimates that it will achieve a significant savings by avoiding the costs of caring for Home residents that have no health care coverage.

BUSINESS IMPACT/SMALL BUSINESSES

Pursuant to section 11346.3, subd. (b) of the California Government Code, the CDVA has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses as defined by section 11342.610. The determination that the proposal would not affect small business is based upon the fact that the proposal applies only to the procedures followed by the CDVA regarding admission to a California Veterans Home. It has no impact at all on any entity that is not a state agency as defined in section 11000 of the California Government Code.

ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES

Pursuant to section 11346.3, subd. (b), of the California Government Code, the CDVA has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The CDVA estimates that the cost impact that a representative private person would necessarily incur in reasonable compliance with the proposed action is \$0 to approximately \$500 per month.

EFFECT ON HOUSING COSTS

None

ALTERNATIVES CONSIDERED

The CDVA must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The CDVA invites interested persons to present statements or

arguments with respect to alternatives to the proposed regulation during the written comment period or at a public hearing if one is held.

CONTACT PERSONS

Inquiries concerning the proposed adoption of this regulation and written comments may be directed to: Chief Counsel Robert Wilson, California Department of Veterans Affairs, 1227 O Street, Suite 306, Sacramento, CA 95814; (916) 654-7022, or

Senior Staff Counsel Denise Lewis, California Department of Veterans Affairs, 1227 O Street, Suite 306, Sacramento, CA 95814; (916) 653-1941.

INITIAL STATEMENT OF REASONS AND INFORMATION

The CDVA has prepared an initial statement of the reasons for the proposed action and has available all of the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the California Department of Veterans Affairs at 1227 O Street, Suite 306, Sacramento, CA 95814. These documents may also be viewed and downloaded from the CDVA website at www.cdva.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All of the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the persons named above.

You may obtain a copy of the final statement of reasons, once it has been prepared, by making a written request to the contact persons named above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the CDVA may adopt the proposed regulation substantially as described in this notice. If the CDVA makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the CDVA adopts the regulation as revised. Please send requests for copies of any modified regulations to the attention of Chief Counsel Robert Wilson at the address indicated above. The CDVA will accept comments on the modified regulations for 15 days after the date on which they are made available.

WEBSITE ACCESS

Materials regarding this proposal can be found at www.cdva.ca.gov.

TEXT OF PROPOSED REGULATIONS

**STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS
1227 O STREET, SUITE 306
SACRAMENTO, CALIFORNIA 95814**

**TITLE 12, CALIFORNIA CODE OF REGULATIONS
AMEND SECTION 501
REGARDING ADMISSION TO VETERANS HOME**

TEXT

Text proposed to be added is displayed in *italic* type.

§ 501. Veterans Home Admission.

(a) The Veterans Home of California shall admit all eligible applicants, provided that care for their needs can be furnished within the available resources of the Veterans Home and subject to the levels of care for which direct admission is permitted.

(b) The Veterans Home shall provide equal opportunity for admission to all eligible applicants regardless of race, color, creed, national origin, religion, ancestry, sex, marital status, disability, religious or political affiliation, age or sexual orientation.

(c) Medical diagnosis of actual or suspected conditions, or classifications of risk potential shall not be the sole factors influencing Veterans Home admission, placement, return from provisional placement, and discharge decisions.

(d) In addition to the requirements stated in Section 1012 of the Military and Veterans Code, the ability of the Veterans Home to provide adequately and appropriately for the applicant's medical and social needs and the applicant's ability and willingness to adapt to the Veterans Home environment shall be determining factors.

(e) Before a veteran applicant may be admitted to the Home, he or she must be participating in a qualified federal, state or private health service plan, a United States Department of Veterans Affairs medical program, or have an application pending for such coverage. A non-veteran applicant must be participating in a qualified federal, state or private health service plan to be admitted to the Home. For purposes of this regulation, a qualified federal, state or private health service plan means one that provides access to preventive, acute and long-term health care services in the geographical area of the Home for which admission is sought.

Note: Authority cited: Sections 64, 72, 700 and 1044, Military and Veterans Code.
Reference: Sections 1012 and 1043, Military and Veterans Code.

INITIAL STATEMENT OF REASONS

**STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS
1227 O STREET, SUITE 306
SACRAMENTO, CALIFORNIA 95814**

**TITLE 12, CALIFORNIA CODE OF REGULATIONS
AMEND SECTION 501
REGARDING ADMISSION TO VETERANS HOME**

INITIAL STATEMENT OF REASONS

INTRODUCTION

The California Department of Veterans Affairs (CDVA) operates and maintains a California Veterans Home (with several campuses) that provides long-term care to eligible veterans and their spouses. Existing law provides that non-veteran spouses of veterans may be admitted to a Home under certain conditions. In such cases, the spouse shall be provided the same medical benefits within the Veterans Home as the veteran. (Mil. & Vet. Code, § 1012; Cal. Code. Regs., tit. 12, § 503, subd. (c).)

Home residents are required to pay a monthly fee that is set by statute as a percentage of monthly income with a cap on the amount that can be charged regardless of income. (Mil. & Vet. Code, § 1012.3.) In virtually every case, the amount an individual pays as his or her monthly fee covers only a portion of the cost of caring for that individual.

The gap between the cost of care and the fee paid is exacerbated when the CDVA provides medical care for a resident that is not participating in a United States Department of Veterans Affairs medical program or a federal, state or private health service plan. The CDVA estimates that over the past 10 years it has lost an average of \$36,000 per year in potential reimbursements because of care it provided to Home residents that have no health care coverage. In one instance, the CDVA incurred a debt of more than \$150,000 in caring for such an individual.

Under existing law, the California Veterans Board (Board) determines the policies for all operations of the CDVA. Home Administrators, under the policy guidance the Board provides, are permitted to implement regulatory provisions that determine the conditions upon which an applicant may be admitted to, and remain in, a California Veterans Home. In policy statement C-12, the Board has directed the CDVA to develop plans and establish procedures for ensuring that a new veteran applicant for admission to a California Veterans Home be either (1) participating in a United States Department of Veterans Affairs medical program, (2) a federal, state or private health service plan, or (3) have an application for such coverage pending before he or she is granted admission. Board policy statement C-12 also requires a non-veteran spouse to be participating in a federal, state or private health service plan as a condition of admission. This rulemaking action implements the Board's policy directive and clarifies and makes specific one condition of admittance to a California Veterans Home. The policy objective is to recover as much of the cost of caring for a Home resident as is reasonably possible.

There are no comparable provisions of federal law related to this proposal.

SPECIFIC PURPOSE OF THE AMENDMENT

The specific purpose of the amendment, and the rationale for the determination that the amendment is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that the amendment is intended to address, is as follows:

Home Administrators, under the policy guidance the Board provides, are permitted to implement regulatory provisions that determine the conditions upon which an applicant may be admitted to and remain in a California Veterans Home. (Mil. & Vet. Code, § 1044.) The proposed amendment adding subdivision (e) to title 12, section 501, of the California Code of Regulations, clarifies the conditions of admission to the California Veterans Home. The amended regulation will help the CDVA to recover some of the costs associated with caring for the residents of our Home.

OTHER REQUIRED SHOWINGS – GOVERNMENT CODE SECTION 11346.2(b)(2)-(4)

Studies, Reports, or Documents Relied Upon – Government Code section 11346.2(b)(2):

The CDVA has relied in part upon Department statistics on unreimbursed medical expenses it incurred in conjunction with caring for individuals who had no health care service plans.

Reasonable Alternatives Considered - Government Code section 11346.2(b)(3)(A):

The CDVA must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The CDVA invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period or at a public hearing if one is held.

Reasonable Alternatives That Would Lessen the Impact on Small Businesses - Government Code section 11346.2(b)(3)(B):

None

Evidence Relied upon to Support the Initial Determination That the Regulation Will Not Have a Significant Adverse Economic Impact On Business -- Government Code section 11346.2(b)(4):

The regulation will not have a significant adverse economic impact upon business since it applies only to a person's eligibility for admission to a California Veterans Home.